

AG Contract No. KR99 0313TRN
ADOT ECS File No. JPA 98-225
Project: STP-016-1/191GE164-H3136 01C
Section: US-191, Clifton - Morenci
Item: 19099

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
PHELPS DODGE MORENCI, INC.

THIS AGREEMENT is entered into 10 May, 1999, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and PHELPS DODGE MORENCI, INC., a Delaware Corporation, acting by and through its duly authorized officer, hereinafter referred to as the "Company".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Company desires to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Company.

3. Incident to a highway improvement project on US-191 contemplated by the State, to include the realignment of approximately 13,500 LF of roadway, the State and the Company desire to cooperate in the construction of a temporary detour which will traverse patented lands owned or controlled by the Company, at a currently estimated cost of \$1,000,000.00, all at State expense, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Provide to State standards design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve Company review comments.

b. After bid opening but prior to the award of a construction contract by the Company, retain the right to cancel the Project in the event of excessive cost.

c. Prior to the award of a Company Project construction contract, by formal resolution of the State Transportation Board, take the detour roadway (Rockhouse Road) into the State highway system, and during construction of the State US-191 realignment project, provide maintenance to the Project detour roadway (Rockhouse Road).

d. Be responsible for all costs associated with the Project. No more often than monthly, reimburse the Company for the reasonable direct actual costs of the Project, with no profit or fee, in an amount currently estimated at \$1,000,000.00. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.

e. Upon completion, approve and accept the Project on behalf of the parties hereto. Upon completion of the State US-191 realignment project, relinquish the right to use the Project roadway as a detour, and by formal resolution of the State Transportation Board, transfer ownership and maintenance responsibility for the detour roadway back to the Company.

2. The Company will:

a. Review the design documents and provide comments.

b. Comply with applicable State procurement laws, rules and regulations. Using the design documents provided by the State, call for bids, and with the concurrence of the State, award one or more construction contract(s) for the Project to the lowest responsive, responsible bidder. Administer same and make all payments to the contractor(s). Obtain State approval prior to the award of any construction contract modifications or "force account" work. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the Company.

c. No more often than monthly, invoice the State for the reasonable direct actual cost of the Project, with no profit or fee, in a format prescribed by the State, in an amount currently estimated at \$1,000,000.00.

d. During construction of the State US-191 realignment improvement project, grant the State the irrevocable right to take the detour roadway into the State highway system, and use the Project (Rockhouse Road) as a detour. Upon completion of the State US-191 realignment project, resume ownership and maintenance responsibility for the Project detour roadway. If applicable, waive the requirements of ARS 28-7209 (formerly ARS 28-106).

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project and reimbursements, provided; however, that this agreement may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon execution by the parties hereto.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of state employees.

4. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007


Phelps Dodge Morenci, Inc.
Manager, Resource Planning
4521 US Highway 191
Morenci, AZ 85540

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

PHELPS DODGE MORENCI, INC.
A Delaware Corporation

STATE OF ARIZONA
Department of Transportation

By 
H. M. "RED" CONGER
President

By 
WILLIAM J. HIGGINS
Deputy State Engineer

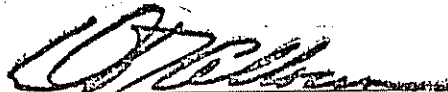
ATTEST

By 
G. L. Town

RESOLUTION

BE IT RESOLVED on this 6th day of January 1999, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with Phelps Dodge Morewnci, Inc. for the purpose of defining responsibilities for constructing a detour (Rockhouse Road) on lands owned or controlled by the Company during construction of the realignment of US-191.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

A handwritten signature in dark ink, appearing to read 'D. Allocco', is written over a horizontal line.

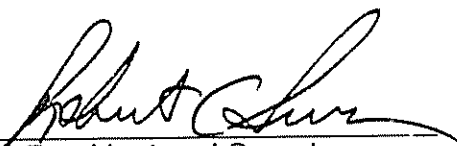
DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group
for Mary E. Peters, Director

SECRETARY'S CERTIFICATE

I, ROBERT C. SWAN, Vice President and Secretary of Phelps Dodge Morenci, Inc., a Delaware corporation (the "Corporation"):

DO HEREBY CERTIFY THAT:

The attached constitutes a full, true and complete copy of the resolutions duly adopted by the Board of Directors of the Corporation by unanimous written consent dated April 15, 1999.


Vice President and Secretary

Date: April 15, 1999

(Corporate Seal)

Phoenix, Arizona, April 15, 1999

PHELPS DODGE MORENCI, INC.

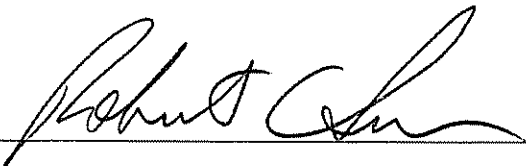
RESOLVED, that the Agreement between the State of Arizona, acting by and through its Department of Transportation (the "State"), and the Corporation, presented to the Directors in the form of AG Contract No. KR99 0313TRN, providing for the construction of a temporary detour across patented lands owned or controlled by the Corporation, be, and the same hereby is, approved, and that the President or any Vice President of the Corporation be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Corporation, to execute and deliver to the State the Agreement in substantially the form hereby approved, with such changes therefrom as the officer executing the Agreement may by his execution thereof approve;

FURTHER RESOLVED, that the proper officers of the Corporation be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Corporation, to execute and deliver all such other agreements, amendments, easements, certificates, documents, and instruments and to take all such other actions as any such officer may deem necessary or appropriate in connection with the execution and delivery of the Agreement and the consummation of the transactions contemplated by the Agreement.

APPROVAL OF
THE PHELPS DODGE MORENCI, INC. ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the PHELPS DODGE MORENCI, INC. and declare this agreement to be in proper form and within the powers and authority granted to the Company under the laws of the State of Arizona.

DATED this 15th day of April, 1999.



Attorney